



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Bahan Dennis Inc.

**File:** B-249496.3

**Date:** March 3, 1994

Thomas E. Bahan and George T. Broderick, for the protester.  
Nora A. Huey, Esq., General Services Administration, for the  
agency.

Behn Miller, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

1. Contracting agency properly canceled a request for proposals where: (1) agency's price estimate was reasonable, and (2) even after being advised that its proposed initial prices were too high, sole technically acceptable offeror submitted a best and final offer which exceeded the government estimate by approximately 20 percent, an amount which the agency is unwilling to expend for the required services.

2. Absent evidence that a contracting agency has acted in violation of statute or regulation, a protester is not entitled to recover proposal preparation or protest costs.

### DECISION

Bahan Dennis Inc. (BDI) protests the cancellation of request for proposals (RFP) No. FCXA-S4-0005-92-N-7-23-92, issued by the Federal Acquisition Institute, General Services Administration (GSA) for instructional services. The agency canceled the solicitation after determining that BDI failed to submit a reasonably priced offer. BDI contends that GSA improperly determined that the firm's price was too high. BDI also requests we award BDI its proposal preparation and protest costs.

We deny the protest and the request for costs.

The RFP was issued on June 23, 1992, as a total small business set-aside, and required the successful contractor to provide qualified personnel to teach 100 procurement classes to entry-level contract specialists and contracting officers on the following three topics: Procurement Planning (15 sessions), Introduction to Contracting (68 sessions), and Contracting by Sealed Bidding

(17 sessions). The solicitation organized the various sessions into five groups based on geographic location, and provided that each group would be awarded to the responsible offeror whose offer was most advantageous to the government. For each group, offerors were to propose a fixed "price per session" estimate. The RFP contemplated awarding up to five fixed-price requirements contracts for a 1-year period.

By the September 2, 1992, closing date, 11 proposals were received; except for BDI's proposal, each offer was rejected as technically unacceptable.<sup>1</sup> On May 13, 1993, the contracting officer conducted telephone discussions with BDI and informed the firm that its proposed prices for each award group were extremely high and unacceptable. In response, BDI advised the contracting officer that BDI had to "load" its prices to recoup possible losses based on travel cost risks.

By letter dated May 18, the contracting officer advised BDI that the agency did not accept BDI's May 13 pricing explanation and requested that BDI submit its best and final offer (BAFO). On May 19, BDI submitted a BAFO which was slightly lower priced than its initial offer.

After reviewing both the current government estimate for this requirement and the pricing history for similar courses procured by the GSA Interagency Training Center (GSAITC), the contracting officer determined that BDI's proposed prices were still excessive and unreasonable. Consequently, on July 1, in accordance with Federal Acquisition Regulation (FAR) § 15.608(b)(1), the contracting officer canceled the solicitation. On July 12, BDI filed an agency-level protest challenging both the cancellation and the determination that BDI's BAFO prices were unreasonable. On October 28, because the agency had repeatedly advised the firm that a decision on its agency-level protest had not yet been rendered, BDI filed this protest with our Office, which reiterates its agency-level protest.

#### DISCUSSION

In a negotiated procurement, the contracting agency has broad authority to decide whether to cancel a solicitation and need only establish a reasonable basis for the cancellation. See FAR § 15.608(b). Contracting officers are required to purchase at "fair and reasonable" prices, FAR § 15.802(b)(1), and cancellation of a solicitation is warranted when the contracting officer cannot do so. See

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<sup>1</sup>One offeror withdrew its proposal prior to technical evaluation.

Selecta Corp., B-252182, May 26, 1993, 93-1 CPD ¶ 421; General Metals, Inc., B-248446.3, Oct. 20, 1992, 92-2 CPD ¶ 256. Cancellation is also warranted where the agency determines that cost savings may be incurred by utilizing another procurement method, so long as this determination does not arise from a lack of procurement planning or otherwise originate as a result of bad faith on the agency's part (for example, misleading a contractor into participating in a sham competition). See Budney Indus., B-252361, June 10, 1993, 93-1 CPD ¶ 450; CEM Equip. Co., B-251344, Mar. 31, 1993, 93-1 CPD ¶ 280, aff'd, B-251344.2, Aug. 30, 1993, 93-2 CPD ¶ 134. Finally, cancellation is justified where an agency determines that it is not in the government's best interest to proceed with a particular procurement. See FAR § 14.404-1(c); Color Dynamics, Inc., B-236033.2, Oct. 27, 1989, 89-2 CPD ¶ 391, aff'd, B-236033.3, Dec. 22, 1989, 89-2 CPD ¶ 583 (agency properly determined it was in the best interests of the government to cancel and recompet a solicitation the following year in the expectation of receiving lower prices and accomplishing the required work at lower cost to the government).

In this case, GSA reports that its primary basis for canceling this procurement was BDI's submission of an unreasonably high price--a price which exceeded the government estimate for this requirement by approximately 20 percent. BDI contends that the government estimate is unreasonable since it is based on erroneous assumptions pertaining to instructor travel costs as well as contractor risk. BDI also contends that given the superior key personnel skills required by the RFP, the government estimate for the quality of instruction services solicited here is grossly underpriced and therefore unreasonable.

Because an agency's determination of price reasonableness involves the exercise of discretion on the part of the contracting officer, our Office will not question such a determination unless it is shown to be unreasonable. Atkinson Dredging Co., Inc., B-250965; B-250967, Feb. 17, 1993, 93-1 CPD ¶ 153, aff'd, B-250965.2; B-250967.2, July 19, 1993, 93-2 CPD ¶ 31. To that end, the FAR provides that the contracting officer is responsible for selecting and using whatever price analysis techniques will ensure a fair and reasonable price. See FAR §§ 14.407-2, 15.805-2. One of those techniques is a comparison of the prices received with the independent government estimate. FAR § 15.805-2(e); Sylvan Serv. Corp., B-222482, July 22, 1986, 86-2 CPD ¶ 89. In this regard, a determination regarding price reasonableness may be based on the government estimate alone. Atkinson Dredging Co., Inc., supra.

The record shows that in determining the government estimate for this requirement, GSA performed an exhaustive analysis. First, the agency reviewed a 3-year pricing history for similar procurement classes purchased by the GSAITC, and used these figures as a benchmark from which to judge the accuracy of the current estimate. Next, to arrive at an estimate reflecting the current requirement, GSA first calculated the cost of travel between each of the various locations, relying on published, unrestricted coach airline fare figures and the per diem amount allowed for each session site and associated travel time and other miscellaneous expenses. After selecting a representative average travel cost figure for each of the five award groups, GSA then calculated the total fee for all sessions, assuming a constant instructor fee for each training session. After adding the travel costs and session fee, GSA then added an additional contractor profit amount--40 percent more than the GSAITC profit figures--to arrive at a total price estimate for each of the five award groups.

The record shows that GSA performed the above cost analysis using three different sets of assumptions: option No. 1, the offeror's proposed price always covered the maximum possible travel cost and half the contractor's fee; option No. 2, the offeror's price always covered the maximum possible travel cost and the full fee; and option No. 3, the offeror's price included the average travel cost and the full fee. GSA then reviewed the three sets of option pricing figures to determine which best represented the government's minimum needs here.

GSA reports that option Nos. 1 and 2 were determined to be undesirable scenarios for meeting the government's minimum needs since both options required the government to pay the maximum possible travel costs associated with performance, resulting in a high probability that the government would overpay the contractor. That is, because the contractor could take advantage of restricted and super saver airfares--which are far below the published maximum airfare costs--under option Nos. 1 and 2, the agency concluded that the contractor would retain the difference between the actual and published travel cost, resulting in an excessive profit to the contractor at the expense of the government. GSA determined that the option No. 3 scenario best reflected the agency's minimum needs since this option enabled the agency to balance the amount of contract risk evenly between the government and the contractor and because the government was not willing to pay more than "average" costs for airfare.

To ensure that option No. 3 was a feasible estimate which realistically reflected this requirement, the agency structured the solicitation to accommodate low airfare travel costs. Specifically, GSA included a contract provision in the RFP which guaranteed the successful contractor 21 days advance notice of the cancellation of any procurement session. Through this provision, GSA intended to enable the successful contractor to obtain super saver fares, which typically are available for airline tickets purchased 21 days ahead of the actual date of travel. In the solicitation, GSA also set out a 3-year history for these courses which indicated the actual number of course sessions which the agency had canceled or added in past procurements; by providing these specifics, GSA intended to enable the contractor to adequately calculate the amount of risk entailed in performing the contract.

The protester makes several arguments challenging the rationale behind the agency's government estimate analysis. For example, the protester contends that the agency unfairly assumed that the successful contractor could obtain cheaper, super saver airfares. The protester also asserts that given the "gold plated" instructor qualifications required here, the agency's fee and profit figures for providing such personnel are grossly underestimated.

The record shows that the method the agency used to calculate its estimate was thorough, detailed, and based on reasonable assumptions. As noted above, the agency reviewed the procurement history for this type of services as a starting point for its calculations, and then adjusted those historical figures to reflect the requirements in the current RFP. For example, the agency added 40 percent to the profit figures from the prior GSAITC contracts. There thus is no indication that the agency was trying to develop a "low ball" estimate. On the other hand, while the protester makes extensive arguments to support its price calculations, in essence these arguments constitute disagreement with the agency's judgments and thus are not sufficient for us to conclude that the agency's estimate was unreasonable. See ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

In any event, even assuming that we were to agree with the protester that the agency underestimated the cost of the instructional services sought here, and that BDI's offer constitutes a reasonable reflection of the current market for these services, GSA has decided that it is not in the government's interest to award a contract for the amount which BDI has proposed.

Throughout its protest pleadings, the protester has repeatedly referenced--and apparently discussed with the contracting officer--numerous ways for GSA to lower the cost of this procurement. For example, the protester recommends revising the required instructor qualifications to make them slightly less stringent; converting the travel expenses from part of the fixed "price per session" estimate into a separate cost-reimbursable contract line item; and requiring award for the five award groups to be made on an all-or-none basis, so that contractors such as BDI will not be forced to "load" or buy the risk of losing several of the award groups into the other award group prices. Since the protester's own arguments demonstrate that GSA can procure these instructional sessions at a lower price, and since the agency is not willing to pay more than the current government estimate amount for these services, we find the agency's cancellation of this solicitation to be unobjectionable. CFM Equip., Inc., supra.

To the extent BDI asserts that it is entitled to its proposal preparation and protest costs simply for competing in this procurement, there is no basis to award BDI these costs. The Competition in Contracting Act of 1984, 31 U.S.C. § 3554(c)(1) (1988), and our implementing regulations, 4 C.F.R. § 21.6(d) (1993), provide for the award of proposal preparation and protest costs only where our Office determines that "a solicitation, proposed award, or award of a contract does not comply with a statute or regulation." In this case, since the challenged cancellation was proper, and since the protester has not alleged any other basis from which to conclude that the agency has acted contrary to statute or regulation, there is no basis to allow BDI to recover these costs. See EAI Corp., B-252748, July 26, 1993, 93-2 CPD ¶ 56; Denwood Properties Corp., B-251347.2, May 13, 1993, 93-1 CPD ¶ 380.

The protest and the request for costs are denied.

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 for Robert P. Murphy  
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